Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the	)	CC Docket No. 01-338
Section 251 Unbundling Obligations	)	
of Incumbent Local Exchange Carriers	)	

COMMENTS OF VERIZON WIRELESS

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Verizon Wireless hereby submits comments in response to the *Further Notice* in the captioned docket.[1] Verizon Wireless supports the Commission's tentative decision to eliminate the "pick-and-choose rule"[2] and urges the Commission to adopt an alternative interpretation of Section 252(i) of the Communications Act of 1934, as amended (the "Act"),[3] that requires incumbent local exchange carriers ("ILECs") to provide nondiscriminatory access to entire interconnection agreements. However, in doing so, the Commission should also adopt other rules that ensure that the goals of Section 252 are met.

INTRODUCTION AND SUMMARY

Verizon Wireless has found that many ILECs decline to include certain terms and arrangements in interconnection agreements because of their obligation to make these

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[1] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking,* CC Docket No. 01-338, FCC No. 03-36 (released Aug. 21, 2003) ("*Further Notice*").

[2] 47 C.F.R. § 51.809.

[3] 47 U.S.C. § 252(i).

provisions available on an individual basis to requesting carriers under the FCC's pick-and-choose rule. As a result, many ILECs will only permit requesting carriers to obtain entire agreements, rather than individual provisions, without seeking arbitration.

Because the pick-and-choose rule has discouraged negotiations and voluntary give-and-take between interconnecting carriers, Verizon Wireless urges the Commission to abandon this rule and adopt an "all-or-nothing" approach that would make any contract that an ILEC enters available in its entirety to any requesting carrier. Such an all-or-nothing rule will provide ILECs the flexibility to consider innovative terms and arrangements that they would not enter because of the pick-and-choose rule while at the same time not disturbing the non-discrimination mandate that is the basis for Section 252(i).

As demonstrated herein, the Commission has the authority to revise its rules to require ILECs to make entire agreements, and not individual provisions of agreements, available to requesting telecommunications carriers. Verizon Wireless also urges the Commission to adopt certain clarifying rules as part of the all-or-nothing approach to clarify and streamline the implementation of Section 252(i). Finally, the Commission should reject any approach that would require standardized minimum terms, whether by extension of the Statement of Generally Available Terms ("SGAT") concept or other similar arrangement.

I. VERIZON WIRELESS SUPPORTS THE ELIMINATION OF THE PICK-AND-CHOOSE RULE.

It is well documented that ILECs have refused to include many desirable terms in interconnection agreements because of their concern that they would have to make such terms available to requesting carriers without other related terms and conditions that are essential components of the deal.[4] Disputes arising from requesting carriers' attempts to opt into specific interconnection arrangements have undermined the intended efficiency of the 252(i) process.

Given the difficulties with the current pick-and-choose rule, the FCC should move expeditiously to an all-or-nothing approach whereby a requesting carrier can adopt an entire agreement rather than a specific arrangement. Under this approach, ILECs will be more likely to make concessions on carrier-specific requests, and ILECs will not avoid entering into a voluntary agreement solely because they are wary of being required to offer one or more of the terms of the arrangement to another carrier that may not be required to accept all of the rates, terms, and conditions that the original parties negotiated.

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[4] *See Further Notice,* ¶ 722 n.2144 (comments filed in response to the Mpower Petition (May 25, 2001). *See also* Implementation of the Local Competition Provisions In the Telecommunications Act of 1996*, First Report and Order*, 11 FCC Rcd 15499, ¶ 1315 (1996) ("*Local Competition Order*"). In *the Local Competition Order,* the FCC acknowledged that negotiating carriers may dispute what terms and conditions apply to the requested network interconnection or arrangement when a requesting carrier invoked its Sections 252(i) right. ILECs have the burden of proof before state commissions when they seek to establish which terms and conditions are legitimately related to the requested service.

The Commission cannot adopt an all-or-nothing rule without explaining its departure from its past statutory interpretation. It should also not adopt an all-or-nothing approach without clarifying certain other requirements.

A. The FCC Has The Authority To Enact An All-Or-Nothing Rule Pursuant To Section 252(i) Of The Act.

In the pending *Further Notice*, the FCC sought comment on whether it has the legal authority to change its pick-and-choose rule in favor of some other interpretation of the legal obligations of LECs under Section 252(i) of the Act.[5] As stated in the *Local Competition Order* and later affirmed by the Supreme Court, the FCC has authority to enact a uniform rule and national standards for implementation of Section 252(i) of the Act.[6] It follows that, with the authority to promulgate rules, the FCC has the duty as well as the authority to change its rules where the record has shown that its rules did not effectuate the legislative purpose articulated by Congress.[7]

While the Supreme Court has stated that the FCC's pick-and-choose rule is the "most readily apparent" reading of Section 252(i),[8] the statute does not compel the pick-and-choose rule. Section 252(i) reads:

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5 *Further Notice* ¶ 721.

6 *See Local Competition Order* at ¶ 1309, *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 396 (1999) ("*AT&T v. IUB*").

7 *See Motor Vehicle Manufacturers Association of the United States v. State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 42 (1983) (Agency must provide adequate basis and explanation for rescinding a requirement); *see also Greater Boston Television Corp v. FCC,* 444 F.2d 841, 852 (1970), *cert. denied,* 403 U.S. 923 (1971) ("An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis…")

8 *AT&T v. IUB,* 525 U.S. at 396.

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.[9]

Interpreting Section 252(i) to require a requesting carrier to adopt an entire interconnection agreement is consistent with the language of the statute and is reasonable. Indeed, in a contract where multiple terms have been traded for others, it is unclear how any interconnection or service could be offered upon the same terms and conditions unless it was also adopted with the rest of the agreement in its entirety.

In the *Local Competition Order,* the FCC declined to require competing carriers to adopt entire agreements pursuant to Section 252(i), fearing that such a requirement would impart onerous technical requirements on these carriers for services that may not be necessary for the requesting carriers' network plans.[10] Even under the current pick-and-choose rule, experience has demonstrated that where carriers are not willing to arbitrate, they are in practice limited to opting into entire agreements under Section 252(i), and there is no evidence that this has presented grave technical difficulties for requesting carriers. Carriers with unique network requirements are always able to adopt an agreement that satisfies their basic needs under Section 252(i) and then seek to amend that agreement to add their network-specific arrangements. Alternatively, these carriers can negotiate and, if necessary, arbitrate separate agreements under Sections 251 and 252. The all-or-nothing rule would not foreclose any carrier from obtaining through

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9 *See* 47 U.S.C. § 252(i).

10 *See Local Competition Order* ¶¶ 1310, 1312.

negotiation or arbitration the individual terms and conditions that the carrier requires as intended by Congress in its adoption of a system favoring commercial negotiations. The all-or-nothing rule would simply streamline the Section 252(i) process and bring it in line with current practice, and at the same time eliminate the perverse incentives that the pick-and-choose rule creates.

B. If The Commission Eliminates The Pick-And-Choose Rule, The Commission Must Adopt Specific Rules To Assure Efficient Implementation Of Its New Approach.

To make the implementation of an all-or-nothing approach efficient, the Commission should streamline the Section 252(i) adoption process. Clear rules will avoid the costly disputes that have resulted from the current rules.

1. The Commission should clarify that Section 252(i) applies to all LECs.

Another source of confusion that the FCC should address in rules related to Section 252(i) is which LECs are subject to the nondiscrimination requirements of Section 252(i). The wording of the statute makes no distinction between LECs, CLECs, rural carriers, or small incumbent LECs.[11] Yet, it has been the experience of Verizon Wireless that LECs that are not BOCs or large independents often question the applicability of the non-discrimination provisions of Section 252(i) to them. Certain LECs argue that only ILECs are subject to the voluntary negotiation and arbitration requirements under Section 252,[12] and that state commission approval requirements do

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[11] *See* 47 U.S.C. § 252(i): "AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS.- a *local exchange carrier* shall make available any interconnection service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

[12] 47 U.S.C. § 252(a)(1), (b).

not apply to them.[13] Thus, because these LECs claim that Section 252(i) only applies to "agreement[s] approved under" Section 252, the requirements of Section 252(i) do not apply to them.

The FCC should confirm that Section 252(i) applies to all local exchange carriers.[14] Interconnection agreements must be publicly available to ensure that competing carriers have nondiscriminatory access to rates, terms, and conditions afforded other requesting carriers. This will streamline the 252(i) application process and eliminate the possibility of inconsistent rulings in the several states.

2. The FCC should adopt rules addressing contract amendments.

Treatment of amendments to agreements implemented through 252(i) should be flexible and further the goals of non-discrimination and efficiency. Without specific rules, requesting carriers may be forced to arbitrate threshold legal questions such as whether adopted interconnection agreements may be amended under an all-or-nothing approach.

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[13] 47 U.S.C. § 252(e).

[14] On a related issue, the FCC cannot and should not attempt to alter the approval and filing requirements of Section 252. The FCC does not have authority to eliminate the statutory requirements. The filing requirements are vital to the implementation of Section 252(i) because they ensure transparency and access to agreements. The language of Sections 252(e) and 252(h) applies to all interconnection agreements that are subject to jurisdiction of the state commission pursuant to Sections 252(b) of the Act. Section 252(e) provides that "Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." To promote uniformity in the nationwide application of these rules, which will maximize the pro-competitive impact of the state commission filing requirements, the FCC should clarify that all interconnection agreements among CLEC, ILECs, and Rural ILECs must be filed and approved by the state commissions, regardless of whether a particular agreement includes an ILEC as a party.

Amendment of interconnection agreements is desirable, as it provides the parties with a manner of addressing contractual inadequacies without requiring negotiation of provisions of the contract. Moreover, all interconnection agreements generally provide for amendment by mutual consent of the parties or changes in the existing law affecting the parties' legal rights or obligations.

All requesting carriers should be required to adopt any and all amendments to the original agreement at the time of adoption. Without such a rule, a requesting carrier could gain an unfair advantage by "cherry-picking" certain amendments, which like the pick-and-choose rule, could discourage ILECs from amending agreements on a voluntary basis. After adoption, a carrier should be able to amend the existing agreement. The parties, however, should not be allowed to re-open unrelated terms in negotiations and arbitration of new amendments. Amendments to original agreements or adopted agreements should be filed and approved by the state commission in accordance with Sections 252(e) of the Act, but streamlined treatment should not be applied because the state commission has not yet approved the terms of such an amendment. Once effective, all requesting carriers that have adopted the original agreement should be able to opt into new amendments to the agreement regardless of whether the new amendment was negotiated or arbitrated by the original parties to the agreement. Adoptions of such additional amendments should be optional as opposed to mandatory, to prevent discrimination between competitive carriers.

II. THE FCC SHOULD REJECT THE SGAT APPROACH BECAUSE IT WOULD PROVIDE A DISINCENTIVE FOR ILECS TO NEGOTIATE INDIVIDUALIZED AGREEMENTS.

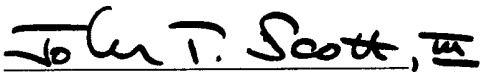
Although it is possible that standardized contracts could provide carriers with easy access to generic terms and conditions, they may actually deter LECs from entering into individualized arrangements. This result is not in the public interest and should therefore be rejected. For example, many of the reciprocal compensation terms contained in CMRS-LEC interconnection arrangements provide for compensation based upon certain assumptions about the amount and type of traffic being exchanged between the carriers. These provisions are supported by traffic measurements or studies and tend to be carrier specific. Interconnection agreements generally include some flexibility to address changes in the traffic flows between the carriers. Such flexibility would be difficult to include in standard agreements or SGATs because each carrier's billing systems and traffic measurement capabilities are different, and one size cannot fit all exchanges between all carriers. The Commission should therefore reject this approach.

CONCLUSION

For the foregoing reasons, the FCC should adopt an all-or-nothing rule pursuant to Section 252(i) and clarify and streamline Section 252(i) adoption processes. The Commission should reject the SGAT approach because it would undermine LEC incentives to develop customized agreements.

Respectfully submitted,

VERIZON WIRELESS



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